Valerie Manor, Inc. *and* New England Health Care Employees Union, District 1199, SEIU. Cases 34–CA–11162, 34–CA–11236, and 34–RC–2116

December 28, 2007

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS LIEBMAN, KIRSANOW, AND WALSH

On June 23, 2006, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief.[1] The General Counsel filed cross-exceptions and a supporting brief, and an answering brief to the Respondent's exceptions. The Respondent filed an answering brief to the General Counsel's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's decision and the record[2] in light of the exceptions,[3] cross-exceptions,[4] and briefs and has decided to affirm the judge's rulings, findings,[5] and conclusions[6] as modified and to adopt the recommended Order as modified and set forth in full below,[7] and finds that the election must be set aside and a new election held.[8]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Valerie Manor, Inc., Torrington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about their union sympathies.

(b) Threatening employees with facility closure, layoffs, job loss, loss of benefits, or other unspecified repri-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The record does not support the judge's findings that CNA Diana DuPont testified that during a slide show on March 24 Head Nurse Nancy Berube told the employees that if Valerie Manor became unionized the employer "would have to sell"; and that Acting Administrator Joseph Colaci told the employees that he "would do anything necessary to keep the Union out." These errors, however, do not affect our adoption of the judge's unfair labor practice findings because the record contains other evidence that the Respondent threatened employees with facility closure and unspecified reprisals.

[3] There are no exceptions to the judge's dismissals of the allegations that the following conduct violated Sec. 8(a)(1): a statement by either Acting Administrator Joseph Colaci or Athena Healthcare Administrator Joe DeVito that another facility managed by Athena Healthcare had closed because of the Union; the presence of Supervisors Darryl Davis and David Steponitis in the break area in back of the facility; and a statement by Supervisor Linda Orlowski that the Respondent would no longer be able to "bend the rules" if it was unionized. There are also no exceptions to the judge's dismissal of the allegations that the Respondent's slides 3–8, 11–16, 33, 34, and 51–53 contained statements that violated Sec. 8(a)(1).

[4] The General Counsel has filed cross-exceptions to the judge's other dismissals of 8(a)(1) allegations. We find it unnecessary to pass on these cross-exceptions because any findings of violations based on these allegations would be cumulative to the violations found and would not affect the remedy. The General Counsel has also filed cross-exceptions to the judge's failure to address and make findings regarding certain other 8(a)(1) allegations. We also find it unnecessary to pass on these cross-exceptions, because any findings of violations based on these allegations would not materially affect the remedy.

[5] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[6] We reverse the judge's finding that Acting Administrator Joseph Colaci engaged in surveillance of the Respondent's employees in violation of Sec. 8(a)(1). No such allegation was contained in the complaint or litigated at the hearing.

In adopting the judge's findings that the Respondent engaged in extensive violations of Sec. 8(a)(1), we find it unnecessary to rely on the judge's findings that the "warranty coupons" that the Respondent distributed to its employees contained a threat to force a strike and a threat of loss of benefits. We also find it unnecessary to rely on the judge's finding that Director of Admissions Lillian Ciesco's statement that if the employees unionized, they "would be forced to strike" was a threat of job loss.

In finding that the Respondent violated Sec. 8(a)(1) by threatening that unionization would be futile, Member Kirsanow relies on the judge's finding that Financial Director of Nursing Home Operations Bill Thomas stated to employees that if the Union were elected, Valerie Manor would not negotiate. He finds it unnecessary to pass, as cumulative, on the remaining futility-threat allegations. For the same reason, Member Kirsanow also finds it unnecessary to pass on the judge's finding that Director of Social Services Linda Orlowski's statement that "[w]e are a family at Valerie. Give us six months to improve" constituted an unlawful promise of benefits.

Member Kirsanow finds that the Respondent did not violate Sec. 8(a)(1) by soliciting employees to revoke their union authorization cards. See *Mohawk Industries*, 334 NLRB 1170, 1172–1173 (2001) (Chairman Hurtgen, dissenting in part).

[7] We shall modify the judge's recommended Order to conform to the violations found and to our standard remedial language, and in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996) and *Excel Container*, 325 NLRB 17 (1997). We shall also substitute a new notice.

The judge recommended a broad cease-and-desist order. We adopt that recommendation in the absence of exceptions. Member Kirsanow would issue a narrow cease-and-desist order.

[8] The election in this case was held on April 14, 2005, pursuant to a Stipulated Election Agreement. The tally of ballots shows 51 votes for and 57 against the Petitioner, with one challenged ballot.

sals if they select the New England Health Care Employees Union, District 1199, SEIU, as their representative.

(c) Soliciting employees to revoke their union authorization cards.

(d) Threatening employees that unionization would be futile.

(e) Threatening employees that a strike would be inevitable if they selected the Union as their representative.

(f) Threatening to withhold a wage increase because of union activity.

(g) Promising to grant employee benefits if the employees do not select the Union as their representative.

(h) Using employee signatures on an antiunion petition without their consent.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Torrington, Connecticut, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 2005.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the election directed herein and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the date of the election directed herein, and employees engaged in an economic strike that began more than 12 months before the date of the election directed herein and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by the New England Health Care Employees Union, District 1199, SEIU.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. December 28, 2007

Wilma B. Liebman, Member

Peter N. Kirsanow, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union sympathies.

WE WILL NOT threaten you with facility closure, lay offs, job loss, loss of benefits, or other unspecified reprisals if you select the New England Health Care Employees Union, District 1199, SEIU, as your representative.

WE WILL NOT solicit you to revoke your union authorization cards.

WE WILL NOT threaten you that unionization would be futile.

WE WILL NOT threaten you that a strike would be inevitable if you select the Union as your representative.

WE WILL NOT threaten to withhold a wage increase because of union activity.

WE WILL NOT promise to grant employee benefits if you do not select the Union as your representative.

WE WILL NOT use employee signatures on an antiunion petition without their consent.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

VALERIE MANOR, INC.

Jennifer F. Dease, Esq., for the General Counsel.
Hugh F. Murray III, Esq. and *Michael C. Harrington, Esq.,* for the Respondent.
Kevin A. Creane, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. These cases were tried in Hartford, Connecticut, on November 7−10, 2005. On August 31, 2005, a complaint and notice of hearing issued in Case 34–CA–11162, based upon a charge filed by the New England Health Care Employees Union, District 1199, SEIU (Union), alleging that Valerie Manor, Inc. (Respondent), had committed over 60 violations of Section 8(a)(1), including repeated threats of facility closure, job loss, loss of wages and benefits, futility and the inevitability of strikes. In addition to the charge, the Union also filed numerous postelection objections to the conduct of the NLRB election held on April 14, 2005. As the objections raised substantial and material issues of fact, and since all but two raised issues identical or similar to the unfair labor practices contained in the complaint, the objections were consolidated with complaint of September 14, 2005. Based upon an additional charge filed by the Union in Case 34–CA–11236, a second complaint and notice of hearing issued on September 29, 2005, alleging that Respondent had committed further violations of Section 8(a)(1) of the Act. On September 29, 2005, an Order Further Consolidating Cases issued consolidating the two complaints and objections in Cases 34–CA–11162, 34–CA–11236, and 34–RC–2116.

Respondent filed timely answers to the two complaints. In its answers, Respondent admitted the commerce allegations, the Union's labor organization status, the supervisory and/or agency status of all the below-named individuals. It is also admitted that it presented certain power point presentations, meetings wherein slides were shown to employees, and that it distributed various literature alleged to violate Section 8(a)(1) of the Act. Respondent generally denied the commission of any unfair labor practices.

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent, a corporation with an office and place of business in Torrington, Connecticut (the facility), has been engaged in the operation of a nursing care facility. During the 12-month period ending July 31, 2005, Respondent, in conducting its operations described above, derived gross revenues in excess of $250,000. During the 12-month period ending July 31, 2005, Respondent, in conducting its operations described above, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Connecticut.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Joseph Colaci	Acting Administrator
Denise Quarles	Administrator
Maureen Markure	Assistant Director of Nurses
Lillian Ciesco	Director of Admissions
Linda Orlowski	Director of Social Services
Darryl Davis	Director of Resident Support Services
Davis Stefanitis	Chef Manager
Nancy Berube	MDS Coordinator, Head Nurse

Susan Maches	Registered Nurse
Bonny Hendrick	Registered Nurse
Tami Chevrier	Charge Nurse
Bill Thomas	Financial Director of Nursing Home Operations, Athena Healthcare
Dee Rosetti	Employee Relations Advocate, Athena Healthcare
Doreen Christiano	Admissions Coordinator, Brookview Health Care Facility
Melissa Moran	Social Worker

Respondent's facility is managed by Athena Healthcare which manages a number of healthcare facilities including Brookview Nursing Home, also located in Torrington, Connecticut.

II. CREDIBILITY

I credit all of the General Counsel's witnesses.

I was impressed with the General Counsel's witnesses' overall demeanor. These witnesses were most responsive and forthright during both direct and cross-examination. Moreover, they made admissions against their interest when their cross-examination conflicted with their pretrial affidavits. These differences were restricted to the words "would" or "could," which I have found in this case that such differences were immaterial and reflected threats.

Further their testimony, especially during meetings was essentially corroborated by other employees. For example, a number of employees testified that during the first meetings conducted by Joseph Colaci as to different large sums of money he was willing to spend to keep the Union out. I find that the variance of the different sums of money reflect truthfulness because over a period of months employees are likely to remember different figures. However, the thrust of all of their testimony was that Colaci would spend any sum of money to keep the Union out.

Moreover, all of the General Counsel's witnesses were employed by Respondent during the course of the trial. In *Conair Corp.*, 261 NLRB 1189, 1266 (1982), the judge set forth:

> As employees of Respondent their testimony was given at considerable risk . . . and is not likely to be false.
>
> The judge's credibility findings were upheld by the Board.

If there were any inadvertent specific failures on my part to make a credibility resolution, such credibility resolutions were implicitly set forth in my resolution and analysis of all of the complaint violations. *Amber Foods, Inc.,* 338 NLRB 712, 713 fn. 7 (2002).

III. CREDIBILITY OF RESPONDENT'S WITNESSES

I found Respondent's witnesses not credible.

Respondent witnesses, especially Joe Colaci and Bill Thomas testified in generalities.

The supervisor presenters of the slide shows had virtually no recollection of their statements to employees between the slides, as contrasted with the specific testimony of employees. Moreover, virtually no Respondent witness contradicted the General Counsel's witnesses, especially in the slide show with testimony, with the exception of broad-leading questions which I have totally rejected as relevant evidence. Such leading questions by Respondent's attorneys often they were unable to remember any conversations with employees were, "Did you threaten anyone . . . did you interrogate anyone?," etc., to which Respondent's witnesses answered no.

Further, a number of Respondent's witnesses did not appear at the trial to give relevant and corroborative testimony. No explanation was given by Respondent why they did not appear.

Detailed discussions as to the credibility of the witnesses are set forth below:

Facts of the Case

Rena Bailey is employed as a certified nurse's assistant, CNA. She works the 3 to 11 p.m. shift. She works at the Skyview and Meadowview sections of Valerie Manor.

Some time in late February after the Union began organizing Respondent, Bailey signed a union card. Shortly after signing this card she attended a meeting with Joseph Colaci and Lillian Ciesco in the Pineview dining room. Bailey and three other employees were present.

Colaci stated that he heard that we signed union cards and he wished that we would ask the Union for our cards back. He stated that he didn't blame us for signing them. He then said he didn't want a union at Valerie and that he would spend a million dollars to fight it.

I find Colaci's solicitation to ask employees for union signed cards is a violation of Section 8(a)(1) of the Act. *Mohawk Industries*, 334 NLRB 1170, 1171 (2001), which states that as a general rule, an employer may not solicit employees to revoke their union cards . . . in an atmosphere where employees would tend to feel peril in revoking union cards. Such atmosphere was created by Colaci's statements, set forth above and below, to the effect that he would spend as much money and do whatever was necessary to keep the Union out. I also find this threat and similar threats described below to be violative of Section 8(a)(1). See *Gravure Packaging*, 321 NLRB 1296, 1299 (1996), enfd. mem. sub nom. 116 F.3d 941 (D.C. Cir. 1997), where the employer stated that he would do everything in his power to keep the union out, also *Soltech, Inc.,* 306 NLRB 269, 272 (l992), where the Employer stated that the company would do everything it could to assure the company would be nonunion.

Bailey also testified that Ciesco said that in Adams House, managed by Athena, located in a neighboring town, was down 20 beds because of the Union. She stated that she is an admission coordinator and the first thing a loved one asks her is whether the facility is a union facility because they don't want to put their loved one in a union home because they felt that they wouldn't get proper care. The General Counsel contends that this is an implied threat of loss of jobs.

The General Counsel also contends that Ciesco threatened employees with a loss of customers if they selected the Union when she informed them that the first thing potential customers ask is whether the facility is unionized and that customers told her that they would not put their loved ones in a union home. Ciesco's statements thereafter linked unionization with the loss of beds at Adams House, and that union facilities are unstable and are always changing hands. The General Counsel contends

that such statements imply that the employees at Respondent's facility would experience the same fate. The General Counsel thereafter contends Respondent failed to show that this threat of customer loss had an objective basis indicating probable consequences of Respondent's control. I find no violation in view of *Stanadyne Automotive Group,* 345 NLRB 85, 89 (2005).

The Supreme Court described the balance between employer free speech rights as codified by Section 8(c) and employees' Section 7 rights in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969).

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effects he believes unionization will have on his company.

In *Stanadyne,* Binkus, an employee and agent, explained that a striker at another *Stanadyne* plant resulted in the death of a guard who was struck in the head during an altercation with the union employees, stating:

> The action we take as individuals does, at times, result in something completely unplanned. Let's not let any unplanned action take place here. Violence, threats, intimidation, and a death are not things that happen just on TV or something you read somewhere about another company. They happened at UAW locations at former *Stanadyne* facilities.

The Board held that:

> To the extent that the Respondent's message may be construed as a 'predication' of the effects of unionization, in spite of its assurances to the contrary, we find that its statements were 'carefully phrased on the basis of the objective fact to convey [the Respondent's] belief as to demonstrably probable consequences beyond [its] control.'

In *TNT Logistics North America,* 345 NLRB 290 (2005), the Board stated:

> With regard to the supervisor's statement that 'if the Union comes in we wouldn't have a job with Home Depot,' we note initially that Haynes told Cook that Home Depot does not do business with unionized carriers. No party disputes the accuracy of Haynes' comment that Home Depot was not union friendly and did not have any union carriers, or the testimony that the Employer's contract with Home Depot was due to expire in October 2005. Inasmuch as these statements are uncontroverted, we view them as objective fact. Based on these circumstances, Haynes predicted that Home Depot would cease doing business with the employer if the Employer's employees selected the Union. Home Depot's possible actions were beyond the Employer's control. Furthermore, Haynes made no threats, nor were his comments interspersed with comments against the Union. We find that, in this context, Haynes' statement would reasonably be understood as nothing more than an expression of personal opinion as to what Home Depot, a client of the Employer, might do in the event of the Employer's unionization. Making this possibility known to employees does not constitute objectionable conduct. Accordingly, in these circumstances, we find that Haynes' statement conveyed his personal 'belief as to demonstrably probable consequences beyond [the Employer's] control,' based on objective fact, which is permissible under *Gissel.*

Counsel for the General Counsel contends that in *Stanadyne* the Board stated:

> Further, the speakers [of Stanadyne] repeatedly made clear that they were not making threats or predictions about the future, but rather, presenting 'facts and recollections about actual events.' By providing 'concrete examples[s] of a negative outcome for employees who were represented by the same union that seeks to represent' the Respondent's employees, the Respondent 'made no prediction at all.' *Manhattan Crowne Plaza [Town Park Hotel],* 341 NLRB 619, 620 (2004).

However this paragraph was merely a further, or moreover position, and not essential to the Board's decision.

Accordingly, I find Ciesco's statements are based upon objective considerations, and upon a reasonable prediction.

Bailey also testified that Ciesco stated that if we did become union, the Union would be forced to strike. Ciesco did not testify as to this conversation. I credit Bailey's testimony.

I conclude Ciesco's statement constitutes a threat to strike and loss of jobs in violation of Section 8(a)(1). See *Heartland of Lansing Nursing Home,* 307 NLRB 152, 158 (1992).

A day or so following Colaci's appointment as administrator of Respondent, Colaci testified he met with the employees in the Pineview of Valerie Manor. He had a number of meetings in the Pineview so that all the employees could appreciate his position. Colaci testified he told the employees at each meeting pretty much the same thing. Colaci told the employees that it was his belief that unions did not belong in health care, and that we would work hard to keep Valerie Manor nonunion. During these meetings I would tell the employees that I was willing to spend $100,000 to keep Valerie nonunion. Colaci testified that during these meetings, employees asked questions about revoking their union authorization cards. And Colaci responded that they could go to the Union and ask for their card back.

I find by Colaci's statement to the effect that he would do whatever he had to do to keep the Union out, coupled with his asking his employees to get their union cards back, again unlawfully solicited his employees at this meeting to get their signed union cards back in violation of Section 8(a)(1). See *Mohawk Industries,* supra.

Colaci's statement that he would do anything necessary to keep the union out is also an implied threat of unspecified reprisals. See *Gravure Packaging* and *Soltech Inc*., supra.

Colaci also told the employees that other nursing homes closed because of unions. I do not find this to be a violation. See *Stanadyne,* supra.

On or about February 28, Kathy Carey, Tammy Robison, Dianne Sullivan, and Carolyn Clark attended a meeting conducted by Colaci in the Pineview dining room. About 15 employees attended the meeting.

Cary testified that Colaci stated that he heard that we were trying to bring in a union and that if we would stop, they could

talk to us about giving raises. Colaci does not deny this statement. I credit Cary's testimony.

I find this statement to be an unlawful promise of benefits, in violation of Section 8(a)(1). *K-Mart Corp.*, 336 NLRB 455, 472 (2001).

Cary also testified that Colaci stated that Respondent would spend whatever it would take to stop the Union. Clark testified that Colaci told the employees that he would spend $100,000 to keep Respondent nonunion. Colaci did not deny this statement. I credit Cary's testimony.

I find these statements to constitute a threat of futility and violative of Section 8(a)(1). *Gravure Packaging* and *Soltech,* supra.

Diane Sullivan, a CNA, testified that Colaci said that he didn't blame us for calling the Union, but he would like us to revoke our cards that we had signed for the Union. He then stated that he didn't want Valerie Manor to become a union facility, and asked us to give the administrator a chance. He said that he couldn't talk about money until this business with the Union was over. Colaci did not deny this statement. I find Colaci tied his request for employees to revoke union cards with the statements above. Under these circumstances, I find that Colaci's statement to Sullivan about revoking her union card is a violation of Section 8(a)(1). *Mohawk Industries,* supra.

I also find Colaci's statement that he didn't want Respondent to be union coupled with the statement that he couldn't talk about money constitutes a promise of benefits and is a violation of Section 8(a)(1). See *K-Mart Corp.,* supra.

Tammy Robison, a CNA, testified that Colaci stated that he didn't blame us for calling the Union. He then asked us to give him a chance and to revoke our signed union cards. He also said he couldn't talk about money until after the union. Colaci did not deny this statement.

I find Colaci's statement about revoking signed union cards is a violation of Section 8(a)(1). *Mohawk Industries,* supra. I also find his statement that "he couldn't talk about money until after the Union," coupled with his statement about revoking the signed union cards is an implied promise of raises once the Union is out of the picture and is violative of Section 8(a)(1). See *K-Mart Corp.,* supra.

Lillian Ciesco, director of admissions, also spoke to a group of employees. Robison testified that Ciesco stated that family members who were considering placing their loved ones at Adams House were asking whether the facility was Union before they would make a decision concerning putting their loved ones. Ciesco also said Adams House had 20 empty beds.

The General Counsel contends that Ciesco's statement clearly implies that what happened to Adams House, which was Union, would happen to Respondent if the Union was elected. The loss of beds would equate to the loss of employees I find Ciesco's statements constitute lawful predictions. See *Stanadyne*, supra.

As set forth above, Colaci had similar meetings with different groups of employees concerning the advent of the Union, during the last week in February. Michelle Hudson, a CNA testified that Colaci met with Hudson and about 12 employees in the Pineview dinning room. She testified that Colaci told the employees he knew the employees were signing cards for the Union and that he didn't want a union in his building. He stated that he would pay hundreds of thousands of dollars not to have them in his building. He then told the employees that if they had signed union cards they could give them back to the Union and he wouldn't hold it against them.

I find Colaci's statement about his knowledge of employees signing union cards and that he didn't want a union in Respondent's facility, his statement to pay hundreds of thousands of dollars to keep the Union out constitutes an unlawful solicitation that the employees should not sign union authorization cards or to revoke signed cards, and is a violation of Section 8(a)(1). See *Mohawk Industries,* supra. I also find Colaci's statement that he knew about employees signing union cards is surveillance in violation of Section 8(a)(1).

I also find that Colaci's statement about paying hundreds of thousands of dollars to keep the Union out constitutes an unlawful threat of futility. See *Gravure Packaging* and *Soltech, Inc.,* supra.

Employees Joan Champagne, Marsha Deming, and Danielle Robison, kitchen employees, met with Colaci, Joe DeVito, administrator at Athena, and Theresa Meyers, supervisor, sometime in late February. Champagne testified that either Colaci or DeVito said they didn't want the Union and that another facility owned by Athena had closed because of the Union, and they were going to fight it. They said this fight was going to cost a lot of money and that there wouldn't be any money for raises. I credit Champagne's testimony. Her testimony is corroborative with all of the General Counsel's witnesses above.

I find no violation in connection with Colaci's or DeVito's statement concerning another facility had closed because of the Union. See *Stanadyne,* supra. However, I do find that the statement that "this fight," a reference to the union campaign, was going to cost a lot of money and there wouldn't be any money for raises, constitutes a threat to reduce employee benefits in violations of Section 8(a)(1). *Pembrook Management,* 296 NLRB 1226, 1239 (1989), and *Heartland Lansing Nursing Home,* 307 NLRB 152, 158 (1992).

Marsha Deming, an aide, testified that Colaci told employees that he didn't want a union in the place and that he would spend $100,000 and that the place would close. He also stated he would take out a second mortgage on his home to keep the Union out. Again, such testimony is essentially corroborative with the General Counsel's witnesses described above.

I find Colaci's statement to be a threat to close the facility and an implied threat of unspecified reprisals. *Gravure Packaging* and *Soltech, Inc.,* supra.

With regards to the threat of closure of the facility, Respondent's statements regarding plant closing that might result from unionization are also evaluated within the "total context" in which they appear, under standards established by the Supreme Court's *Gissel* decision. Such statements have sometimes, but rather seldom, been found to be predictions "based on objective fact." Far more commonly, the Board has deemed them coercive threats. In *Atlas Microfilming*, 267 NLRB 682 (1983), for example, the Board found a violation where a supervisor told all the employees in her department that the plant would close

if the employees selected the union. See also *Highland Yarn Mills,* 313 NLRB 193, 206, 209 (1993).

Robison testified that Colaci stated he heard a union was coming in and he didn't want it in there. He said he had stock in Valerie and if Valerie Manor were to go union his stock would be no good. It would be devalued. He said he would fight to the end and would pay $80,000 to $100,000 to prevent the Union from coming in and that the Union would have to start from ground zero. Again, her testimony is corroborated by the witnesses described above.

I find this statement a threat of futility in violation of Section 8(a)(1).

Deming and Robison also testified that Colaci stated he would spend $100,000 and if necessary he would take out a second mortgage and he would fight to the end. I find these statements express a futility of supporting the Union and in violation of Section 8(a)(1). See *Gravure Packaging* and *Soltech Inc,* supra. Moreover, Colaci's statement that the Union would have to start bargaining from ground zero, also violates Section 8(a)(1) given the multitude of Section 8(a)(1) violations in this case. See *Superior Emerald Park Landfill, LLC,* 340 NLRB 449, 461 (2003). I find this statement a threat of futility in violation of Section 8(a)(1). *Gravure Packaging* and *Soltech, Inc.,* supra.

Joan Champagne, a CNA, testified that either Colaci or DeVito stated that another facility owned by Athena had closed because of the Union. I find such statement does not violate the Act. See *Stanadyne,* supra.

Darla Jacobs, a CNA, testified that Supervisor Darryl Davis told her that Colaci wanted to meet with her. Jacobs had missed the general meetings discussed above. During this meeting Jacobs testified that Colaci said he knew the employees were upset; he knew that union cards were being passed out, and said the Union wasn't the answer. Colaci then stated that he would spend 80 to $100,000 to keep the Union out, he was a shareholder, and had a mortgage, and had bills to pay himself. There was no money, that's all they had.

I find Colaci's statement that he would spend up to $100,000 to keep the Union out, that he had a mortgage and bills to pay and there was no money, that's all they had, to be violative of Section 8(a)(1), an unlawful statement of futility. See *Gravure Packaging* and *Soltech, Inc.*, supra.

During the meetings described above neither Colaci, Ciesco, or DeVito denied any of the statements described above.

Darla Jacobs testified that she had a conversation with Bonnie Hendricks, a registered nurse, and an admitted supervisor within the meaning of 2(11) of the Act, on or about February 26. During this conversation Hendricks told Jacobs "What do you think about the Union stuff going on?" Jacobs testified that she was an adult, that she would hear both sides and that she would make a decision. Hendricks then stated Athena would close the place if the Union came in. She then told Jacobs that when she was younger she worked for a place and the union came in and they closed it. She did not state why it was closed or the name of the facility.

Respondent did not call Hendricks as a witness.

However, I find Hendrick's statement that "Athena would close the place if the Union came in" is a clear threat to close the shop and a violation of Section 8(a)(1). See *Gissel Packaging,* supra, and *Highland Yarn Mills,* 313 NLRB 193, 206, 207 (1993). I do not find her testimony concerning closing a facility where she once worked to be a violation. See *Stanadyne,* supra.

Additionally, I find Hendrick's statement "What do you think about the Union stuff going on?" to be an unlawful interrogation. As the General Counsel points out in her brief, such interrogation was accompanied by an unlawful threat. Accordingly, I find such interrogation a violation of Section 8(a)(1). See *Hoffman Fuel Co.,* 309 NLRB 327 (1992); *Rossmore House,* 269 NLRB 1176 (1984), affirmed 760 F.2d 1006 (9th Cir. 1985).

Diana DuPont, a CNA, was employed by Respondent for 3 years working the night shift. DuPont testified she had a discussion with Nancy Berube, an admitted supervisor, in the Skyview section of Valerie Manor. CNA's Ellen Dalene and Irene Pisarcyk were present. DuPont testified that Berube asked them what they thought about the Union. DuPont recalls there was some conversation that took place, and then Berube said "if Valerie Manor became unionized, that Athena would sell it." I credit DuPont's testimony. I find such statement to be a threat to close Respondent's facility if the Union came in. *Gissel Packaging* and *Highland Yarn Mills,* supra.

Berube admitted that she had a conversation with Dalene, Pisarcyk, and DuPont sometime between late February and March 7. Berube testified that she told them about an instance where she worked in another building and it became unionized and eventually it closed down. She did not name the facility. I find no violation in this connection. See *Stanadyne,* supra.

Tammy Robison testified that after their general meeting with Colaci, she and Dianne Sullivan and Carolyn Clarke met with Supervisor Tammy Chevrier. Robison testified that Chevrier stated Valerie Manor would never accept the Union and if the Union came in they would sell or close the facility and we could lose our jobs. Sullivan and Clarke corroborated Robison's testimony. Chevrier could not recall this conversation.

I find Chevrier's statement is a direct threat to close Respondent's facility if the Union came in, and a violation of Section 8(a)(1). See *Gissel Packaging* and *Highland Yarn Mills,* supra.

Deming testified that the employees would take their breaks in an area in back of the facility. There is a back doorway and two small picnic tables where the employees could congregate and smoke. Deming testified that before the Union filed its petition on March 7, the employees would sit around the two picnic tables during their break times. Deming testified that Darryl Davis and David Steponitis, low-level supervisors, would usually hang around the doorway area. Deming testified that every time she took a break it seemed both supervisors were present and sitting or standing around the picnic tables.

Deming admitted that Davis and Steponitis are smokers, that the area in the back parking lot where the picnic tables are located is the only area where smoking is permitted, and that Davis and Steponitis would smoke at the tables or by the doorway. Neither Davis or Steponitis spoke to any of the employees during these breaks.

Steponitis admitted that he smoked either at the back door or at the picnic tables and that this practice was the same before the union campaign and after.

I conclude there is insufficient evidence to establish unlawful surveillance.

Post Petition

On March 7, the Union filed a petition for an election.

At some point in time after the Union began to organize the employees, Respondent hired a labor relations consulting firm. This firm drew up well over 170 slides with short messages as to why it was better for its employees to remain nonunion, the aspects of the collective-bargaining process including strikes, and the repercussions that must be considered. These slide shows were divided into three presentations called "Power Points." Each presentation lasted 1 week. The first presentation was called "questions and answers," the second presentation was called "collective bargaining" the third presentation was called "Facts." The slide shows lasted about an hour or so. These slide shows were conducted by 2, 3, or 4 supervisory employees who met with small groups of employees, 4 to 15 employees. The slides were projected on a large screen, easily readable. The presenters read the slides, and between the slides there would be discussions between the presenters and the employees; questions and answers. The meetings were mandatory. The employees would sign in. The meetings were held round the clock each week, during working hours. The employees were paid for the time spent during the meeting.

Unlawful 8(a)(1) Statements Made by Supervisors Between Slide Show

Respondent held a power point presentation on March 22, 2005, at 1:30 p.m. The presenters were Linda Orlowski and Theresa (Tree) Meyers. It should be noted that Orlowski conducted a number of slide show meetings. Pursuant to Respondents direct examination Orlowski could not recall any of the conversations with employees at any of the meetings she conducted. Through Respondent's attorney's leading questions, Orlowski simply testified "no" as to Respondent's witnesses' testimony relating to alleged 8(a)(1) conduct. For example, Respondent's counsel would ask a leading question like "Did you ever threaten any employees?" The answer was always "No," etc.

Meyers did not testify.

Dianne Sullivan credibly testified that Orlowski stated "If we went out on an economic strike we won't receive pay, unemployment benefits and our health coverage would end." Sullivan further testified that Orlowski also stated "The Union doesn't care about families or residents, and that we would lose everything." I find such statement to be a threat to lose benefits and wages and a clear violation of Section 8(a)(1). See *Pembrook Management,* 296 NLRB 1226, 1239 (1989). In *Pembrook,* the Judge found a statement "If the Union got in all present benefits might be lost" to be violative of Section 8(a)(1).

Sullivan also testified that Orlowski stated, "We are a family at Valerie (Respondent). Give us six months to improve." I find that such statement especially coupled with the above threat of "losing everything" is an implied promise of improved benefits. See *Hubbard Regional Hospital,* 232 NLRB 858, 870 (1977), enfd. in pertinent part 579 F.2d 1251 (1st Cir. 1978).

Sullivan further testified Orlowski stated "With a Union we won't be able to bend the rules."

The General Counsel contends the "bend the rules" statement is violative of Section 8(a)(1). I do not find such statement to be a violation of Section 8(a)(1). See *Pembrook Management,* supra at 1227, where the Board cited *Tri-Cast, Inc.,* 274 NLRB 377 (1985), involving exactly the same conduct, and concluded such conduct "is nothing more or less then permissible conduct."

Jacobs testified that a slide show was conducted on March 23 at 10 a.m. and 11 employees attended. Lillian Ciesco and Melissa Moran took turns reading the slides which were projected on a screen. Ciesco and Moran made comments between reading the slides. Jacobs testified that Moran said we can check the financial records with Colaci, that Respondent has no money, and that Ciesco and Moran said that if there was a strike we "could" lose our jobs.

Moran did not testify and although Ciesco testified, she could not recall any conversation employees raised concerning the Union or Jacobs' testimony as set forth and described above. Pursuant to Respondent's attorney's usual leading questions, Ciesco denied any unlawful activity, i.e., did you promise raises, "No," threaten discharges, etc., "No."

I find the statements by Ciesco and Moran establish a threat of the inevitability of a strike which would cause the employees to lose their jobs. *Heartland of Lansing Nursing Home,* 307 NLRB 152, 158 (1992).

In connection with the phrase "if there was a strike we 'could' lose our jobs." it is well settled that a prediction of plant closure as a possibility rather than a certainty is violative of the Act. *Daikichi Corp.,* 335 NLRB 622, 624 (2001); *McDonald Land & Mining Co.,* 301 NLRB 463, 466 (1991). Indeed in Gissel, 395 U.S. 575, 616–620 (1969) itself, where the standards for evaluating the lawfulness of predictions of adverse consequences based on the Union's appearance were formulated, that if the employer stated that a strike, "could lead to the closing of the plant," violated Section 8(a)(1) as a threat to strike. Id. at 588. Indeed past decisions have recognized as threats statements using "could" and statements using "would." Compare, e.g., *Thayer Dairy Co.,* 233 NLRB 1383, 1388 (1977). "Our sincere belief is that if this Union were to get in here, it . . . could work to your serious harm." was a threat. *W. E. Carlson Corp.,* 346 NLRB 431 (2006).

Moreover, in the instant case the alleged threat that "if there was a strike we could lose our jobs." was not followed by the *Laidlaw* reinstatement rights.[1]

On March 23, a meeting was conducted at 1:30 p.m. Orlowski and Jodie O'Brien conducted this meeting. Seven employees attended this meeting.

Tammy Robison testified that Orlowski stated that we would have to pay union dues, and they could change the assessment of dues whenever they wanted to; that negotiations with the Union could take 2 years and the parties could reach an im-

[1] *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir 1969), cert. denied 397 U.S. 920 (1970).

passe, and if it went to impasse you could be forced to strike; you could lose your job, and your house.

Kathy Carey testified that Orlowski said they wouldn't be able to help us with our jobs if we had a Union, that we would have to have to start paying dues after the election, that we would be forced to strike if the Union were elected, and that we would lose our vacations and seniority.

Orlowski admitted that she conducted the above meeting with O'Brien but had no recollection as to what she, O'Brien or any of the employees attending the meeting said. Orlowski was unable to recall any questions put to her or responses she might have made to employees. Pursuant to the usual leading questions, she denied any unlawful conduct. O'Brien did not testify.

Robinson and Carey credibly testified that Orlowski stated negotiations with the Union could take 2 years and the parties could reach an impasse. I find this statement to be a threat of futility. See *Airtex,* 308 NLRB 1135 (1992). See also *Daikichi Corp.,* supra*,* as to "could" or "would."

They also testified Orlowski's statement about impasse which I found unlawful coupled with the statement that you could be forced to strike, lose your job and your house constitutes a clear threat that the employees would have to inevitably strike and lose benefits and their home. See *Gissel Packaging* and *Heartland of Lansing Nursing Home,* supra.

Hudson testified that Orlowski threatened Hudson and the other employees that "they would have to start from the beginning." I find such statement given the multitude of unfair labor practices to be a threat of futility, in violation of Section 8(a)(1). See *Superior Emerald Park Landfill, LLC,* 340 NLRB 449, 460, 461 (2003).

On March 24 at 10 a.m., another slide show was conducted by Orlowski and Ciesco. Eleven employees were present. Mary Roberts, a CNA, credibly testified that following the slide show Orlowski stated that "If you vote in favor of the Union on Thursday a Union could[2] take us out on strike on Friday." I find this a clear threat of the inevitability of strike. See *Heartland of Lansing Nursing Home,* supra. Orlowski also stated that if you went on strike the facility could be sold or closed. I find this statement is an unlawful threat to close the facility in violation of Section 8(a)(1). See *Gissel Packaging* and *Atlas Microfilming,* supra. Orlowski also stated you could lose your benefits or seniority. This threat is virtually the same threat that was made to Roberts and Carey described above on March 23. Accordingly, I find this statement to be a threat of loss of benefits in violation of Section 8(a)(1). See *Heartland of Lansing Nursing Home,* supra; *Pembrook Management,* 296 NLRB 1226, 1239 (1989), and *Daikichi Corp.,* supra.

Hudson also testified that Orlowski said that if the Union comes in we would lose our benefits, seniority, our vacation time, and we would have to start from the beginning. I find this statement to be a threat of loss of benefits in violation of Section 8(a)(1), a threat of futility as to bargaining with the Union. See *Pembrook Management* and *Heartland of Lansing Nursing Home*, supra, and as to the threat of futility, a violation of Section 8(a)(1). See *Gravure Packaging,* supra.

[2] See discussion on "could" or "would" below.

Employee Marsha Deming testified that Ciesco stated that outside individuals considering placing their loved ones in Valerie Manor would call the Manor and ask if the facility was Union and that they did not want to place their loved one in a union home. I find insufficient facts to establish a violation.

Ciesco also threatened employees that union homes went out of business because they were unionized. Ciesco cited Adams House as an example. In this connection she stated that 20 beds were down at Adams House.

I find such statements not to be violative of the Act. See *Stanadyne,* supra.

On March 24 at 11:30 a.m., a meeting was conducted by Nancy Berube and Tree Meyers, three employees were present at this meeting. Diana DuPont testified that at some point during this slide show Berube stated that if Valerie Manor became unionized the employer would have to sell.

Berube was not questioned by Respondent's counsel concerning this meeting. Meyers did not testify.

I find this a clear coercive threat to close Respondent's facility. See *Gissel Packaging* and *Atlas Microfilming,* 267 NLRB 682, 687 (1983).

March 28–April 2 Meetings

During this period Respondent presented its second slide show entitled "collective bargaining."

On March 29 at 10 a.m., Respondent conducted its slide show. The meeting was conducted by Linda Orlowski and Andy Sebastian, director of maintenance. Slides would be read and in between slides or groups of slides Orlowski and Sebastian would answer questions and engage in conversations with the employees between slides.

In connection with slides relating to collective bargaining Jacobs testified that during this meeting Sebastian stated that if we go to negotiations we could lose less than we already went in with. Orlowski stated that we could lose the benefits that we already have if the Union came in. These benefits included vacations, sick leave, holidays, pension plans, medical insurance, and life insurance. Jacobs testified that Orlowski without reading from the slides stated we could lose all these benefits if the Union came in.

Orlowski testified she was unable to recall questions put to her by employees or any responses she might have made to employees at any of the slide shows she presented. Pursuant to the usual leading questions put to her by Respondent's attorney she denied that neither she nor Sebastian made any unlawful statements.

I find Orlowski's statements concerning the loss of benefits if the Union was elected as the employees collective-bargaining representative are violations of Section 8(a)(1). *Pembrook Management,* supra, and *Superior Emerald Park Landfill,* 340 NLRB 449, 461 (2003).

A meeting was scheduled on March 29, 1:30 p.m., and conducted by Ciesco and O'Brien. Nine employees were present. Mary Roberts testified that this meeting was about benefits. Both Ciesco and O'Brien read the slides and made comments in between slides. Roberts testified that O'Brien stated that if you voted for the Union you would lose all your benefits, for example insurance and health care, and have to start fresh.

Ciesco testified that she did not recall conducting the meetings during the week of March 28 through April 2, and that she did not recall any comments made by her copresenters. Respondent's attorney made the usual leading questions and solicited that neither she nor her copresenters stated anything during these meetings that could be considered unlawful conduct.

O'Brien did not testify. I find O'Brien's statement constitutes a threat of loss of benefits and a violation of Section 8(a)(1). See *Pembrook Management* and *Superior Emerald Landfill LLC,* supra.

A formal slide show meeting was held on March 31 at 8 p.m. The meeting was conducted by Orlowski and Meyers. Three employees attended. Bailey testified that they had a slide show, and they talked about Unions, particularly a glass company that was Union. Meyers said we would lose our benefits that we have now with Valerie and Athena if we decided to go Union.

As set forth above, Orlowski was unable to recall questions put to her by employees or any responses she may have made to employees. Again the same leading questions by Respondent's attorney denied any unlawful conduct. Meyers did not testify.

I find Meyer's statement concerning loss of benefits violates Section 8(a)(1). See *Pembrook Management* and *Superior Emerald Park Landfill LLC,* supra.

Slide Show April 5–9

A formal slide meeting was conducted on April 5 at 10 a.m., by Quarles and Orlowski and eight employees attended. Jacobs testified that Orlowski stated we were getting wrong information from the Union. Jacobs also testified Orlowski said 99.9 percent were economic and we could lose our pay, our jobs, and all our benefits. I find this statement constitutes a threat of loss of benefits. See *Pembrook Management,* supra. I also find the inclusion of jobs in the above threat constitutes a threat of loss of jobs in violation of Section 8(a)(1). *Heartland of Lansing Nursing Home,* supra.

Orlowski could not recall any statements that she or Meyers made during this slide show. Quarles did not testify. Pursuant to the usual leading questions by Respondent's attorney Orlowski denied any unlawful conduct.

Carey credibly testified that Sebastian stated that if we joined the Union it would be like joining a sinking ship. Carey testified that Orlowski said we would go on strike right away and that we would lose our benefits. I find these statements to constitute a threat to strike and a loss of benefits and a violation of Section 8(a)(1). See *Pembrook Managemen*t and *Heartland of Lansing Nursing Home,* supra.

Carey also testified that Thomas stated if the Union came in, they would not negotiate with the Union. Thomas did not deny this statement. I find this statement is a threat of futility. See *Superior Emerald Landfill,* supra.

On April 6 at 10 a.m., another slide show was conducted by Bill Thomas, Doreen Christiano, and Quarles. Twelve employees were present.

Following the slide show Carey testified that Thomas stated that Brookview had laid off 22 employees because they got a Union and that 1199 didn't care about those employees; he stated that they had to close a unit in Brookview because they had the Union and could not fill the beds. The General Counsel contends this is an implied threat to close Respondent's facility if the Union wins the election. I find such statement is not a threat. See *Stanadyne,* supra.

On April 6, a slide show meeting was held conducted by Thomas Christiano and Quarles.

Carey testified that Thomas told the employees at the meeting that Brookview, a nursing home managed by Athena, laid off 22 workers because they, Brookview, were represented by the Union. Thomas also stated that Brookview had to close a wing because of the Union and they couldn't fill their beds with residents because it was a union facility. The General Counsel contends that such statements imply that what took place at Brookview would take place at Respondent's facility.

For the reasons set forth above, I find no violation. See *Stanadyne*, supra.

On April 6, another slide show meeting was held at 11 p.m. The meeting was conducted by Thomas, Quarles, and Christiano. Thomas told employees at this meeting that Brookview lost 2-1/2 million dollars since it became unionized; that it lost sick days, and vacation days, and that Brookview laid off 22 employees and 68 beds were vacant because people did not want to go to Brookview because it was unionized. I find that by such statements Respondent was implying that whatever happened at Brookview would happen to Respondent's employees if they solicited the Union as their representative to be predictions and not loss of benefits. I find such statements not violative. See *Stanadyne,* supra.

DuPont also testified that Thomas told the employees that in the past when Respondent only received 1 percent from Medicare they still gave the employees a 2-percent raise. Thomas also stated that if Respondent received the 4-percent in funds from the State of Connecticut, it wanted to be able to use that money for the employees, instead of spending it on lawyers and union litigation fees. Thomas then stated there were a lot of good things that Athena and Respondent were planning for employees, but could not discuss while the labor union was negotiating and that if the labor union won the trial election that Athena and Respondent would not be able to do such things. Thomas did not deny such statements.

I find this promise of benefits if the employees did not select the Union as their representative to be unlawful and a violation of Section 8(a)(1). See *Advanced Mining Group,* 260 NLRB 486, 501 (1982), enfd. 701 F.2d 221 (D.C. Cir. 1983), and *Toys-R-Us,* 300 NLRB 188, 190 (1990).

Carey also testified that Thomas stated if the Union came in they would not negotiate with the Union. Thomas did not deny such statement. I find such statement was a threat of futility, and a violation of Section 8(a)(1). See *Superior Emerald Landfill*, supra at 461.

Champagne testified that Thomas did all the talking. Champagne testified that Thomas said "he had worked in different homes, and they had a union, and they really didn't make out you know, and that some places closed where they had unions." The General Counsel contends that such statement establishes that the employees selected the Union as their representative Respondent would close its facility, in violation of Section

8(a)(1). I find no violation of Section 8(a)(1). See *Stanadyne,* supra.

Hudson credibly testified at a meeting held during the first week in April that Thomas stated that Respondent could not give you any more money, because they don't have any money to give. Thomas did not deny such statement. I find such statement implies that if the Union was selected as the bargaining representative, bargaining would be futile *EBY Brown Co., L.P.,* 328 NLRB 496 (1999).

Mary Roberts credibly testified that there was a meeting with Thomas and Christiano sometime in March or April. About 10 employees were present. Roberts testified that Thomas stated that there is a Brookview home that got a Union in and had to lay off 22 employees who lost vacation time. Thomas also stated that families wouldn't place their relative in this home if it was a union home.

The General Counsel contends that Thomas clearly implied that what happened at the Brookview facility because of the Union would happen at Respondent's facility. I find that Thomas' statement was not violative of the Act. See *Stanadyne,* supra.

At some point in these meetings Christiana admitted discussing the Union's campaign generally and told Roberts and the employees attending these meetings, that if the Union came in they "could" lose their benefits. I find this statement is a threat of loss of benefits, in violation of Section 8(a)(1). See *Daikichi Corp.,* 335 NLRB 622 (2001), *Pembrook Management,* and *Heartland Lansing Nursing Home,* supra.

I find in the instant case, given the vast number of 8(a)(1) violations, that there is no difference between "could" or "would." See *Gissel Packaging,* supra; *Baddour,* 303 NLRB 275 (1991), and *Daikichi Corp,* supra. Accordingly I find Christiano's admission is a clear threat of loss of benefits if the Union was elected as the bargaining representative. See *Pembrook Management, Heartland of Lansing Nursing Home,* and *Daikichi Corp.,* supra.

On April 7, Respondent conducted another meeting at 1:30 p.m. Six employees attended. The meeting was conducted by Quarles, Christiano, and Thomas. Clarke credibly testified Thomas stated that if the Union comes in there would be layoffs. I find this to be a clear threat of layoff in violation of Section 8(a)(1). He also stated we could lose our benefits, sick time, vacation time and seniority, and we would not get a 4-percent raise from the state. I find this to be a clear threat of loss of benefits in violation of Section 8(a)(1). See *Pembrook Management* and *Heartland of Lansing Nursing Home,* supra.

Several days before the election on April 14, the employees were assembled in different groups over the course of a day. Respondent's representatives, Denise Quarles Respondent's Administrator, Thomas, Christiano, and Dee Rosetti spoke to the assembled groups by reading segments of the speech designated under their name. The thrust of these speeches was to give Denise, the new administrator, another chance. Quarles once again pleaded to give her a chance, and Athena a second chance. Quarles told employees to remember that a "no" vote is "a vote to give me one chance—1 year—12 months—365 days to work with you directly to resolve our issues and concerns. If at the end of that time you feel that you made a mistake by voting 'No,' you can call this union or any other union that you feel you need. All I ask is that you give me one shot!"

Christiano told the employees to work it out together and to "Please give Denise a chance!"

Rosetti also ended her portion of the speech with a plea to give Denise a chance and Athena a second chance, and telling employees that they have been heard and it did not cost them a dime.

Thomas ended his presentation by repeating his plea to give "Denise a chance . . . give Athena a second chance" and telling employees that they already won, they got Respondent's attention and Respondent won't "blow it again."

Counsel for the General Counsel contends this plea for a second chance is an implied promise in violation of Section 8(a)(1). The General Counsel cites *Reno Hilton Resorts Corp.,* 319 NLRB 1154, 1156 (1995). In this case the Board stated:

> We further agree with the General Counsel that Hughes made unlawful statements in a series of speeches to employees on November 2 (2 days before the election). In the speeches, Hughes reminded the employees of the benefits the Respondent had already granted (including the unlawfully dominated quality action teams, which we discuss below), and stated:
>
> Hilton has given you all an opportunity to demonstrate your commitment and value. I'm asking you now to give Hilton a chance to show its commitment to you. Vote no . . . Remember in a year from now you can bring this union, or any other union, in here. But right now, give Hilton and give me a chance, and I'll deliver.

The instant case establishes a constant and extensive anti-union campaign with a multitude of 8(a)(1) violations as in *Reno Hilton.* The plea for a second chance is almost identical to that in *Reno Hilton.*

In *Toys-R-Us*, 300 NLRB 188, 190 (1990), wherein the Board stated:

> Viewed as a whole, the Respondent's conduct went beyond the bounds of acceptable campaign propaganda. Despite its disclaimers that it could not make promises, the Respondent's message was clear and its implied promise specific: the Respondent asked employees to give it another chance to improve wage rates after which the employees could reevaluate their need for union representation. Accordingly, we find that under *Color Tech Corp.,* above, the Respondent violated Section 8(a)(1) by its unlawful implied promise of better wages.

See also *Advanced Mining Group,* 260 NLRB 486, 501 (1982), 701 F.2d 221 (D.C. Cir. 1983).

Accordingly, I find an implied promise of benefits in violation of Section 8(a)(1).

Roberts credibly testified that sometime between the speech, described above and the election Christiano told CNA Roberts that "you have been here for 20 years, why are you doing this?" She then went on to elaborate that she could lose her seniority if she selected the Union and that she should "really think about what she was doing."

I find these statements constitute an implied threat of loss of seniority, a benefit and other benefits if she voted for the Union. See *Pembrook Management,* supra.

Michele Hudson credibly testified that Maureen Markure, assistant director of nursing, spoke to her on several occasions during the Respondent's antiunion campaign before the election. Markure warned Hudson that you don't know what you are doing, "I used to work at a union facility and the union came in and people were fired and laid off and I was one of those people." She warned Hudson that she should be sure of what she was doing.

Counsel for the General Counsel contends Markure's statement is an implied threat of discharge or layoff.

I find such statement to be a lawful prediction. See *Stanadyne,* supra.

On April 14 the election was held. The Union lost the vote 57 to 51.

Jacobs testified the day after the election, Respondent held a general staff meeting in the conference room with about 20 to 30 other employees. The meeting was conducted by Administrator Quarles. Quarles thanked everyone for giving her a second chance and told employees she posted information that explained that it took 7 days for the NLRB to certify the election. Quarles said she was waiting to see if the election was going to be certified and she was checking the fax machine to see if there was any unfair labor practices filed. Director of Admission Ciesco was present in the meeting and asked Quarles what an unfair labor practice was, and Quarles told employees that an example would be if Bill Thomas gave an employee $100 and told them to vote "No." Ciesco also asked Quarles about employees' July raises. Quarles said that she couldn't talk about wages or raises until the election was resolved and it could go unresolved for months. Valerie Manor employees normally have not received raises in July, but normally received raises in January.

Jacobs testified that a meeting was held on or about July 21, with day-shift employees in the Pineview dining room and was conducted by Quarles and Bill Thomas. Quarles began the meeting by stating that she had good news and bad news; that the good news was there was an ice cream social that day for any staff or residents, and the bad news was that the NLRB had filed for a hearing, and they were going forward and there was going to be a hearing.

Jacobs testified that Bill Thomas then spoke and he talked to employees about the 4-percent funding increase that would go towards wage increases that Respondent and the employees were expecting to receive from the State of Connecticut. Thomas told employees that they were going to get a 4-percent raise, but since the Union filed charges and a hearing with the NLRB was scheduled, Respondent couldn't give employees the raise. Thomas told employees that he was sure that Respondent would win the hearing and then Respondent could move on and give employees their wage increases. Thomas then stated that it was too late for employees to drop the hearing and even if employees called the NLRB they could not stop the proceedings. Thomas said he wished that the Union could call off the hearing and just have a reelection next year. Ciesco, a supervisor, who was at the meeting, asked Thomas what would happen to the 4 percent Respondent received from the State. Thomas replied "We have to hold onto it." Kathy Carey, Michele Hudson and Rena Bailey attended this meeting and heard the same message that employees would not receive the 4-percent wage increase that Respondent was receiving from the State because of the NLRB hearing resulting from the Union filing postelection objections and unfair labor practice charges.

Bailey testified she attended the end of this meeting and then another meeting held later in the evening for night-shift employees. At the later meeting, Thomas said that he had called Athena and that employees were going to get the 4-percent increase.

About a week after this meeting, Doreen Christiano informed employees that Respondent was going against their lawyer's advice and taking a risk and giving employees their 4-percent raise in October instead of January. Employees received a 4-percent wage increase in October.

Respondent's witnesses did not contest the testimony of the General Counsel's witnesses, the General Counsel contends Respondent violated Section 8(a)(1) when Quarles implied in the first meeting, the day after the election, that employees would not receive wage increases unless the election was resolved by the Union not filing objections or charges. When, Ciesco asked about "July raises" in a meeting where Quarles was explaining that that the election results would not be certified if the Union filed objections or unfair labor practice charges, it provided a very public platform for Quarles to ensure that she communicated to employees that their wages and raises were on hold unless the Union did not file objections or charges. The fact that employees' had not received July raises in several years makes it clear that Respondent intended to give employees the message that no raise would come unless the Union did not dispute the election. The General Counsel cites *Laidlaw Waste Systems,* 307 NLRB 52 (1992).

In *Laidlaw*:

> The complaint alleges that 'Respondent . . . at its Rolling Meadows facility, told employees that they would not receive a wage increase because of their union activities.'
>
> In or around October 1990 various employees asked members of *Laidlaw's* management whether the employees would be getting their annual pay increase. In response, management told the employees that 'we could not change the compensation because it was in litigation,' or that the wage increase 'was tied up in court.' Explicitly on some occasions, and implicitly on all others, management indicated that the litigation and court battles that it was referring to were between *Laidlaw* and the Union. (As noted earlier, *Laidlaw* contended before both the Board and the court of appeals that the Union should not be certified.)

Those statements by management constitute a violation of Section 8(a)(1). As discussed in the previous part of this decision, the law by no means prohibited *Laidlaw* from granting a pay increase to the employees in October 1990. By erroneously claiming that the law did forbid such an increase, and by linking that circumstance to the Union's presence at the facility, *Laidlaw* coerced, restrained, and interfered with the employees

in the exercise of the Section 7 rights. *Gupta Permold Corp.,* 289 NLRB 1234, 1250 (1988).

Accordingly, I find Respondent impliedly threatened to withhold wage increases because of the Union's filing unfair labor practices and objections.

The General Counsel further contends in July, when Respondent knew it would be receiving a 4-percent funding increase from the State that would go towards employees' raises, it again threatened employees that it was withholding the wage increase in retaliation for the Union filing unfair labor practice charges. In this connection Thomas clearly stated that because there was going to be an unfair labor practice hearing, employees would not get their expected wage increases. The General Counsel contends the fact that Respondent later changed its mind and gave employees their raises does not remedy the fact that Respondent unlawfully blamed the Union and Union supporters for the fact that expected wage increases were being withheld. *Laidlaw,* supra; *Wellstream Corp.,* 313 NLRB 698, 707 (1994).

Accordingly, I find this to be a second implied threat to withhold wages because of the union activities set forth above.

It is not alleged that granting this raise is an unfair labor practice. Respondent did not contest the General Counsel's contention in its brief.

Flyers and Slides

Section 8(c) of the National Labor Relations Act establishes that:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. 29 U.S.C. § 158.

According to the Supreme Court, this provision establishes that in the context of an election campaign for union certification, an employer can state to employees a prediction, whether explicit or implied, of the effect of unionization if it is:

> [C]arefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him. The statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion. *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 618 (1969).

Counsel for Respondent contends that only the wording of a slide or flyer can be considered to determine lawfulness. I find as described below that the lawfulness of a slide must be taken in context with Respondent's unlawful conduct.

In the instant case the credible evidence establishes that threats, express or implied, of futility of bargaining, or plant closure, or layoffs and discharges, of losing benefits and wages, and inevitable strikes, were taking place throughout the Respondent's intense antiunion campaign. Moreover, most of the threats took place during Respondent's slide show meetings, where the presenters would show a slide and then verbally utter clear unlawful threats to establish what the slide really meant. Its real message, as counsel for the General Counsel puts it so eloquently, "The power of supervisors' direct words to employees, instead of a dry recitation of slide after slide, has a more powerful, long lasting and coercive effect on employees." The same is true for the flyers.

The Board has consistently held that in the context of alleged threats, in writing or verbal one must consider the background of other unlawful conduct which represents a significant context for evaluating the lawfulness of an employee's statements through slides or flyers. See *Mediplex of Danbury,* 314 NLRB 470, 471 (1994). See also *Southern Pride Catfish,* 331 NLRB 618, 619 (2002), and *Reno Hilton,* supra. In *Mediplex,* the Board stated:

> More generally, a significant component in the analysis of an employer's remarks to employees which involve protected activity is 'the context of its labor relations setting,' *Gissel,* supra, 395 U.S. at 617. In other words, the Board considers the totality of the relevant circumstances, id., at 589; *NLRB v. Virginia Electric & Power Co.,* 314 U.S. 469, 477–479 (1941); see also, e.g., *Harrison Steel Castings Co.,* 293 NLRB 1158, 1159 fn. 4 (1989) (a background of other unlawful conduct or union animus represents significant context for evaluating the lawfulness of an employer's statements).

And in *Southern Pride,* the Board stated:

> Moore testified that he had discussed with employees the 'possibility' that the Respondent would close down if the employees chose the Union. The judge found, and we agree, that Moore made his statements about the closings of other facilities after unionization in the context of coercive threats, and conveyed to employees the message that if they chose the Union they would lose their jobs.

To consider only the wording of a flyer or slide without oral or other written statements relating to the slide or flyer would be totally unrealistic.

The slides counsel for the General Counsel would be violations are set forth in Joint Exhibits 4 and 6:

J E 4 Slide 3

- If the union wins the election, it simply starts the bargaining process. Proposals are exchanged and negotiated until there is either an agreement or impasse (deadlock).
- There are many uncertainties with this process. The end result may be that you have *fewer or less* benefits than you have right now.
- But one thing is certain. By law, the union cannot force Valerie Manor to accept a contract, or any proposal, that is not in the facility's best interest.

J E 4 Slide 4

THE LAW STATES . . .

"The obligation does not, however, compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other."

J E 4 Slide 5

The duty to bargain is only the duty to talk—*not the duty to agree.*

There is *no obligation* to reach an agreement.

J E 4 Slide 6

Look at what these court cases say in support of the National Labor Relations Act.

J E 4 Slide 7

817. For reasons to be stated we hold that while the Board does have power under the Labor Management Relations Act, 61 Stat. 136, as amended, to require employers and employees to negotiate, it is without power to compel a company or a union to agree to any substantive contractual provision of a collective bargaining agreement.

[sic] vision of their terms. It must be stressed that the duty to bargain collective does not carry with it the duty to reach an agreement, because the essence of collec-[sic]

"The Act does not compel agreements between employers[."]

J E 4 Slide 8

Collective Bargaining Can result in Loss of Benefits

just as surely as an employer may increase benefits, in bargaining, he may take them away.

J E 4 Slide 11

In view of what the law says, what might you be will[ing] to give up at the bargaining table?

J E 4 Slide 12

BENEFITS YOU HAVE NOW

- Vacation

1–4 years of service=2 weeks paid
5–10 years of service=3 weeks paid
10–15 years of service=4 weeks paid
15+ yea[r]s of service=5 weeks paid

- Sick Says[sic]—6 days
- Personal Days—2 days
- Holidays—7 days
- Bereavement—3 days

J E 4 Slide 13

BENEFITS YOU HAVE NOW

- Jury Duty
- Pension/401K—Facility pays 1% annual W-2 gross earnings
- Partial benefit program (Part time employees)
- No benefit program (higher hourly rate operation)
- Medical Insurance
- Vision Insurance
- Dental Insurance
- Life Insurance
- Short Term Disability
- Shift Differentials

J E 4 Slide 14

BENEFITS YOU HAVE NOW

- Annual Wage Adjustments
  —July 2001—2.0%
  —January 2002—1.5%
  —January 2003—3.5%
  —January 2004—2.0%
  —January 2005—2.0%

  Total—11%

- Recruitment Bonus
- CNA's Sign On Bonus
- Tuition Reimbursement
- Uniform Discount
- Annual Holiday Party

J E 4 Slide 15

BENEFITS YOU HAVE NOW

- Cookouts
- Holiday Meals
- Personal Life Insurance
- Softball Tournament
- Holiday Gift Certificates
- Gourmet Holiday Chocolates
- Coffee Wednesdays
- Pizza/Bagel/Candy/Sunday passed out dur ing certain seasons
- Employee Suggestion Box

J E 4 Slide 16

You know what you have now . . .

So what kind of things may be on the union's agenda for a labor contract?

J E 4 Slide 33

When an Employee who has left the bargaining unit returns to a bargaining unit job, the Employer will resume deductions. This provision, however, shall not relieve any Employee of the obligation to make the required dues and initiation payment pursuant to the Union by-laws in order to remain in good standing.

J E 4 Slide 34

What could a union bargain away in order to get these clauses in its contracts?

J E 4 Slide 51

Think about it . . .

Are you ready to pay union dues in exchange for possibly the same, or less, in wages and benefits than you already have?

J E 4 Slide 52

And while bargaining goes on . . .

What about future changes in wage rates?

J E 4 Slide 53

Future wage rates and benefit changes await the result of the bargaining process.

I find each individual slide or slides put together merely express how the collective bargaining process works, what you can gain in benefits and what you could lose, that you would have to pay union dues for the union's services in representation, and that future benefit and wage rate changes assist the result of the bargaining. I find no threats or other unfair labor practices in these slides.

J E 4 Slide 54

How long does the bargaining process take?

Weeks?
Months?
Years?
How long could you wait?

I find this slide is a threat of futility. See *Airtex,* 308 NLRB 1135 fn. 2 (1992).

Given the slide coupled with unlawful threats in violation of Section 8(a)(1) see *Casa Duramax Inc.,* supra, and *Mediplex of Danbury, Southern Pride Catfish,* supra, and *Reno Hilton Resorts Corp.,* 319 NLRB 1154–1156 (1995). I find a violation of Section 8(a)(1).

The General Counsel alleges that during "Round Three" of the slide shows Respondent presented employees the following slides, which counsel for the General Counsel contends to be violative of Section 8(a)(1).

J E 6 Slide 75

We informed you earlier that first contracts can take a long time to agree upon. What happens if the union and Valerie Manor cannot reach an agreement?

J E 6 Slide 76

STRIKE!

J E 6 Slide 81

Nursing Homes Claim Sabotage
Hartford Courant 3/30/01

Records allege incidents of sabotage inside a number of facilities where union members walked off the job on March 20.

—Critical ID bracelets removed from patients' wrists
—Photos removed from Alzheimer's unit
—"Do Not Resuscitate" stickers removed
—Door to oxygen tank room glued shut
—Feces smeared on a bathroom wall
—Chocolate given to diabetic residents

Residents at the Olympus Home in Waterbury allege they were told they would be "poisoned, killed, beaten, given the wrong meds, not receive personal care and would not have their laundry done by the replacement workers."

J E 6 Slide 82

[Newspaper article—headline reads]
Second Nursing Home to Close

J E 6 Slide 86

If there is a strike, will you still have your job?

Slides 75 and 76 arguably make the sort of prediction that the Board and the Supreme Court have held constitutes an unlawful threat. The sequence of slides states that if the Respondent and the union cannot come to an agreement in negotiations, there will be a strike. Note the bold attention of "STRIKE" indicates there will be a strike. This message is similar to one the employer in *Gissel* conveyed by means of a pamphlet. The pamphlet reminded employees of a past strike at the company. The pamphlet stated that the employees, in considering unionization, were "forgetting the lessons of the past." Id. at 587–588. The employer also circulated a pamphlet that read, "Do you want another 13-week strike?" Id. at 588. The pamphlet went on, "We have no hopes that the Teamsters Union Bosses will not call a strike." Id. The Court held that it was reasonable for the Board to find that these and similar statements constituted threats. Id. at 619. It pointed out that the employer had no objective support for the assumption that the union, which had not even begun to bargain, would have to go on strike to achieve its goal. Id.

The Board has followed this reasoning in finding 8(a)(1) violations in cases like *L.S.F. Transportation, Inc.,* 330 NLRB 1054 (2000). A manager told employees that if they joined a union he would replace them when they went on strike. Id. at 1066. The Board held that because the employer used the term "when," rather than "if," the employees could reasonably have inferred the employer was a threat is to act in such a way that would encourage a strike. Id. While the statement might be ambiguous, the Board resolved this ambiguity against the manager. Id.

By contrast, in *General Electric Co.,* 332 NLRB 919 (2000), the employer circulated a flyer which, according to the Board, more clearly indicated that a strike would be a possibility, rather than an inevitability. Id. at 919. The flyer read:

THE REAL QUESTION

You know of the union's position on 12-hour shifts, wages, benefits . . .

You know the company's position on these very same issues . . .

The company and the union organizers are MILES APART!

Are you willing to see this Site possibly become another victim in long, bitter negotiations?

VOTE NO! [Emphasis in original.]

The Board had first agreed with the ALJ that the above language was threatening but changed its ruling after the United States Court of Appeals for the District of Columbia Circuit disagreed and remanded the case. Id. Quoting the court, the Board noted that "the judge erred by converting a statement of possibility into a statement of certainty." Id. Thus, where management discusses strikes in the context of a union election, it needs to make clear that strikes are merely a possibility, not a certainty.

The Board's most recent decision invoking the Supreme Court's *Gissel* standard is *Stanadyne Automotive Corp.,* 345 NLRB 85 (2004). In that case, the employer held meetings in which the CEO and two managers spoke about, among other issues, the potential for strikes and possible consequences of such strikes if the employees were to vote to join a union. Id. at 3–6. The Board concluded that the managers' statements did not constitute threats. Id. at 5–6. The employer did not imply that a strike was inevitable, since it mentioned that there was an option apart from a strike—union could accept management's offer. Id. at 3. Moreover, the official who made this statement qualified it by saying that these were the only two options that he knew of, implying that perhaps other options—options that he simply did not know of—existed as well. Id.

By contrast, in the instant case, slide 76 gives an unqualified answer to the question of what would occur if there were no agreement: There would be a strike. The slides fail the *Gissel* test because that they present no objective facts to support the assertion that the only option if the union and management fail to come to an agreement is a strike. As the managers in *Stanadyne* admitted, going on strike is not the only option in such a case; the union could, after all, choose to accept the management offer, even if it does not agree that the offer is fair. One might argue that a union will not, by definition, accept an offer that it has not agreed to. However, this is the kind of ambiguity that, as per *L.S.F. Transportation, Inc.*, should be resolved against the party that made the questionable statement. It would be reasonable for employees to infer from the sequence of slides 75 and 76 that a strike is the only option if the union and management cannot reach agreement during negotiations. And, since the Respondent did not present objective considerations to support this prediction, it would be reasonable for employees to conclude that the Respondent was not merely stating a possible outcome of negotiations but, rather, threatening employees with the spectre of a forced strike caused by surface bargaining on the part of the Respondent.

Given this threat of a forced strike, in slides 75 and 76, in light of *Gissel,* take on a cast that also constitutes a threat. The Court wrote in *Gissel:*

> [The employer's] speeches, pamphlets, leaflets, and letters conveyed the following message . . . that the 'strike-happy' union would in all likelihood have to obtain it potentially unreasonable demands by striking, the probable result of which would be a plant shutdown, as the past history of labor relations in the area indicated . . . the Board could reasonably conclude that the intended and understood import of that message was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities.

Thus I find slides 75 and 76 constitute a threat to force employees to strike and are in violation of Section 8(a)(1).

The Flyers

Counsel for the General Counsel argues in her brief that 5 flyers distributed throughout this intense antiunion campaign are violative of Section 8(a)(1) of the Act.

The first flyer is entitled "Brookview Facts." As set forth above, Brookview is a nursing home managed by Athena and located in Torrington, the same town as Respondent.

1. Brookview facts

The flyers state that, "Brookview Employees *DID NOT* give the new administrator one year to resolve issues, nor did they give Athena a second chance." It then describes how the census at Brookview was down since the Union organized Brookview and that one unit had been closed. It stated, "Anyone can spin what the reason for the unit closure is, but THE FACT is there are only 125 Residents in a facility that is a 180 bed facility! Please give *DENISE* a chance and give Athena a second chance."

With respect to the major portion of the flyer, it clearly intends to establish that what happened at Brookview, organized by the Union, will happen at Respondent's facility. As set forth above, I do not find this portion of the flyer to be in violation of Section 8(a)(1). See *Stanadyne,* supra.

However, with respect to that portion of the flyer which states: "please give *DENISE* a chance, and give Athena a second chance." I find that portion to be an implied promise of benefits in violation of Section 8(a)(1). See *Reno Hilton, Toys-R-Us, Advanced Mining Group,* and *Keystone Lamp,* supra.

Counsel for the General Counsel contends that a flyer entitled "collective bargaining" is an implied threat of loss of jobs and/or benefits:

2. Collective bargaining

The second flyer states in bold print next to a pair of rolling dice:

"Nothing to lose? NO . . . You have everything to lose."

Everything goes on the bargaining table, not just what you hope to gain, but what you have now as well.

Everything is negotiable.

There is absolutely no law that prohibits Valerie Manor from offering less than what the employees cur-

> rently have, and absolutely no law which prohibits the union from accepting an offer of less. It happens all the time. It's called collective bargaining and it's a two-way street. Wages and benefits could go up or down. No one knows, least of all the union pushers.
>
> Are you ready to accept the risks of Collective Bargaining?

See *Liquitane Corp.,* 298 NLRB 292 (1990).

I find no violation as to that part of the flyer.

However, I do find the phrase in the bold lettering **"Nothing To Lose? NO . . . You have everything to lose."** as a threat of unspecified reprisal.

In *L.W.D., Inc.,* 335 NLRB 241 (2001), 76 Fed. Appx. 73 (6th Cir. 2003), a letter went out to employees stated in part:

> We intend to give you many facts and opinions about unions during the next several weeks. This is a very serious matter for you and your families, so please thing [sic] about it carefully. Then, on the day of the election, vote as if your job depends on it.

The Board found the phrase "to vote as if your job depended on it" constituted an unlawful threat linking the election outcome with job security. See also *Casa Duramax, Inc.,* 307 NLRB 213, 218 (1992). In *Engineered Comfort Systems,* 346 NLRB 661 (2006). The Board held that a threat "I can't believe you're going Union. You want to bring the whole fucking world down with you," to be a threat in violation of Section 8(a)(1). Accordingly, I find Respondent's flyer, on its face constitute an implied threat of job loss and other unspecified reprisals, and a violation of Section 8(a)(1).

Moreover, taken together with express and implied threats of loss of jobs and benefits throughout the entire election, the phrase "Nothing to lose? You have everything to lose." is a clear threat to loss of jobs and/or benefits which I find to be a violation of Section 8(a)(1). See *Mediflex of Danbury* and *Southern Pride Catfish,* supra, and *Reno Hilton Resorts Corp.,* 319 NLRB 1154, 1154–1156 (1995).

3. Warranty coupons

During the course of the election campaign "Warranty Coupons" were created by Respondent and directed employees to get "guarantees" in writing from the Union. Each coupon was a guarantee that employees were to ask the Union to sign. One guarantee coupon said, "My union will pay for the support of you and your family and all of your family's expenses if you are thrown out of work because of union strikes." Of course, the clear message was that the Union would not be able to support the employee and his or her family if the Union called a strike and replacements were hired. I find the statement described in the coupon is an implied threat of job loss in the event of a strike. See *Casa Duramax Inc.,* supra. I also find that Respondent's implied threat is also reinforced by Respondents antiunion campaign. See *Mediflex of Danbury, Southern Pride Catfish,* and *Reno Hilton Resorts Corp.,* supra.

Respondent's sole contention is that the warranty "lawfully asks employees whether the Union will pay their expenses if a strike is called." There is no discussion or cases cited by Respondent to support its contention.

Accordingly I find the coupon to be a threat to force a strike and for a threat to lose benefits in violation of Section 8(a)(1).

4. Kamikaze election

A flyer was distributed to all employees shortly before the election. The entire flyer states:

> A kamikaze was a WW II Japanese pilot whose sole purpose was to make a suicidal crash into his target.
>
> A kamikaze was willing to die in his effort to somehow injure the enemy.
>
> A kamikaze obviously had no concern about the future of himself or his family.
>
> Out of anger and frustration, some Valerie Manor employees seem to be taking this same attitude. But Valerie Manor's future is your future.
>
> **Don't be a kamikaze . . .** Vote **NO** Union

The counsel for the General Counsel contends the flyer is a threat of unspecified reprisals and cites *Gilbert Woods Products,* 170 NLRB 1049, 1060, 1061 (1968). In *Gilbert Woods,* a speech to assembled employees Gilbert stated:

When you walk into that voting booth on March 10. . . .

> That voting is kind of like a man jumping out of a building to commit suicide. In that split second when he jumps out of the window he starts on a course from which he can't turn back . . . . The same thing can happen to you when you vote in the election. . . .

The Board further stated:

> It is also clear that coupling their voting for a union to a man committing suicide was intended to coerce employees into voting against the Union.
>
> The Board found these statements in violation of Section 8(a)(1).
>
> In *Reno Hilton,* supra:
>
> The judge found that Hughes' communication was not unlawful. He cited *Airporter Inn Hotel,* 215 NLRB 824 (1974), in which the Board found that the employer's communication, which contained language similar to the second paragraph of Hughes' memo, was lawful.
>
> We disagree with the judge's conclusion. The Board has held that although employers' warnings of 'serious harm' that may befall employees who choose union representation are not unlawful in and of themselves, they may be unlawfully coercive if uttered in a context of other unfair labor practices that 'impart a coercive overtone' to the statements. *Community Cash Stores,* 238 NLRB 265, 269 (1978), citing *Greensboro Hosiery Mills,* 162 NLRB 1275, 1276 (1967), enf. denied in relevant part 398 F.2d 414 (4th Cir. 1968). We find such a context here. The Respondent violated the Act repeatedly. Its unlawful acts included threatening an employee that the hotel would close before the Union could come in, stating that union supporters could be fired, promising to grant benefits if the Union was rejected, threatening to withhold or take away benefits if the Union was certified, granting benefits during the union organizing campaign, and indicating that it would reject any union demands in order to show how 'stupid' un-

> ions are. The coercive effect of Hughes' memo is apparent when it is read against the backdrop of those unfair labor practices, which give both specificity and force to Hughes' otherwise vague assertions that the Union would not benefit employees, could hurt them seriously, and might jeopardize their jobs.

In both *Reno Hilton* and *Gilbert,* the Board noted strong anti-union campaigns with lots of 8(a)(1) violations.

I find Respondent's flyer is a threat of unspecified reprisals.

5. Unauthorized employer petition

In support of the Union, employees signed a petition, stating: "We're Voting 1199 'YES' pm Thursday April 14th." The Union petition states that the employees who signed the petition, using their first and last names support the Union and are voting "YES." Underneath the union petition three rows of employee signatures appear, 25 employees in each row.

The day before the election, Respondent posted its own purported petition. Respondent's "petition" set forth that the employees who signed their leaflet, "be sure your voice is heard . . . Vote Thursday!! For the majority of the names on this list who have rethought their decision, we want to say THANK YOU for giving Denise ONE chance. Vote NO!" Respondent's leaflet had the same three rows of employee signatures appearing on the Union "Vote Yes" petition superimposed underneath their leaflet. Respondent admitted that without the consent of the employees, it took their signatures from the Union "Vote Yes" petition and reproduced them on the Respondent's "Vote No" petition.

The General Counsel contends that Respondent's failure to receive the employees authorization or consent to use their signatures on Respondent's flyer is a violation of Section 8(a)(1) citing *Sony Corp. of America,* 313 NLRB 420, 428 (1993), wherein the Board stated:

> Thus, without consent, unit employees had their pictures used to give seeming approval to the Company's antiunion message. The employees were not asked whether they wished to subscribe to the antiunion message and were presented with a fait accompli after the video was shown to them and to the other unit employees. In essence, the tape was the visual equivalent of placing the employees' names on a written antiunion document and circulating it to all the other unit members. The unit employees here had the right to assist and support the Union if they so desired; Respondent interfered with that right by using their pictures without their consent to convey an antiunion message.

The Board found similar violations of Section 8(a)(1) in *Sony* and *L.W.D., Inc.,* supra. See also *Allegheny Ludlum Corp.,* 333 NLRB 734, 745 part 5 (2001).

Respondent contends that the employees' use of their signature without consent on their flyer was simply intended and understood as a parody of the Unions poster. I find that any slide, or flyer that was shown to or distributed to employees was well calculated for employees to abandon support for the Union and to cast their vote for Respondent. I find such contention by Respondent that the flyer was a "parody" is certainly without merit.

Respondent also contends that there was no testimony that was offered by the General Counsel to prove employees have given their consent for the Union's flyer. I find such contention irrelevant and ludicrous.

Accordingly, I find that Respondent admittedly did not get the consent of employees on its flyer, and accordingly find a violation of Section 8(a)(1).

Petitioner's Objection

The petitioning union filed objections to the conduct as it relates setting the election aside. These objections were much the same as the allegations set forth in the complaint.

I find that Respondent threatened its employees with loss of benefits, loss of jobs, threats that strikes would take place and threats of unspecified reprisals. These threats were made during slide show meetings, other meetings with employees, all of which required employee attendance. In addition, the employees were subjected to unlawful slides during these meetings. Additionally, Respondent distributed unlawful flyers to all employees. Further still, employees were threatened individually with unlawful reprisals. I find these threats sufficient to require the election to be set aside. See *Alpha Cellulose Corp.,* 265 NLRB 177, 178, 179 (1982).

In view of the multitude of threats throughout the election campaign, I find it unnecessary to rule on two objections not covered by the complaint. One objection was the day before the election, April 13, the alleged presence of a security guard parked by the main entrance of Respondent's facility gave some employees the feeling that the security was present because there was going to be violence. The second objection was that during the election a supervisor escorted an employee to the room where the election was taking place and opened the door so that the employee could enter.

I find it is unnecessary to decide these objections.

Accordingly, I conclude that the election should be set aside.

CONCLUSIONS OF LAW

1. Respondent Valerie Manor, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. New England Health Care Employees Union, District 1199 SEIU is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated voluminous allegations of Section 8(a)(1) described below in the Order.

REMEDY

With respect to the voluminous 8(a)(1) violations, I shall recommend an Order requiring Respondent to cease and desist the conduct described below.

A petition for an election was filed by the Union on March 7, 2005, and an election was held on April 14, 2005. The Union lost the election by a tally of ballots of 57 to 51.

Given the voluminous 8(a)(1) violations and the closeness of the election, I recommend a second election be held at an appropriate time.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Valerie Manor, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their union sympathies.

(b) Expressly and\or impliedly threatening to sell its facility, close its facility, threatening employees expressly and\or impliedly with more onerous working conditions, loss of benefits including wages, seniority, loss of jobs, threatening employees, expressly and\or impliedly that they would be forced to go on strike, threatening employees with stricter enforcement of job rules, threatening expressly or impliedly that it would be futile to select the Union as its bargaining representative, threatening expressly or impliedly with future wage increases and expressly and or impliedly threatening unspecified reprisals.

(c) Soliciting its employees to revoke their signed union cards.

(d) Making promises, express and implied of improved benefits, including wage increases, if they abandoned their union activities.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Within 14 days after service by the Region, post at its facility in Torrington, Connecticut, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent.

Dated, Washington, D.C. June 23, 2006

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees concerning their union sympathies.

WE WILL NOT expressly and/or impliedly threaten to sell our facility, close our facility, threaten expressly and/or impliedly with more onerous working conditions, loss of benefits including wages, seniority, loss of jobs, threaten employees, expressly and/or impliedly that they would be forced to go on strike, threaten employees with stricter enforcement of job rules, threaten expressly or impliedly that it would be futile to select the Union as its bargaining representative, threaten expressly or impliedly with future wage increases and expressly and/or impliedly threaten unspecified reprisals.

WE WILL NOT solicit our employees to revoke their signed union cards.

WE WILL NOT make promises, express and implied of improved benefits, including wage increases, if they abandoned their union activities.

VALERIE MANOR, INC.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."